

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Dorel Marius Necsoiu et al.
Serial Number: 10/725,249
Date Filed: December 1, 2003
Examiner: Monica M. Pyo
Group Art: 2161
Confirmation No.: 1933
Title: **INFORMATION SHARING SYSTEM FOR
GEOGRAPHICAL DATA**

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

12/10/2007 CKHLOK 00000013 502148 10725249

01 FC:2252 230.00 DA

Dear Sir:

PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This Petition Under 37 C.F.R. § 1.181 To Withdraw Holding of Abandonment is applicable to the above-referenced patent application.

On December 20, 2006, a Notice of Non-Compliant Amendment (the "Notice") was mailed to Applicants from the U.S. Patent and Trademark Office ("USPTO"). The Notice provided for a one month time period for reply, with extensions of time available.

Applicants received and responded to the Notice by means of a Response to Notice of Non-Compliant Amendment (the "Response"), filed electronically on March 6, 2007. Accompanying the Response was a Petition for Extension of Time on Form SB/22.

The Response was filed within three months of the Notice, and required a two month extension. However, due to error, Applicants checked the box for a "One month" rather than "Two months" extension. However, Applicants also checked the boxes stating that fees were authorized to be paid from a deposit account and that any required fees may be charged to a

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01 FC:2251 60.00 CR

specific Deposit Account. The Response also included an authorization to charge to the deposit account. A copy of the Response and Petition for Extension are attached hereto as Exhibits A and B, respectively.

The Response and Petition were received by the Examiner, as indicated by the Electronic Acknowledgement Receipt, attached as Exhibit C.

The Examiner has taken the position that because Applicants checked the "One month" box, the Applicants did not timely file the Response. The Examiner has further stated to Applicants that the application is to be abandoned. A Notice of Abandonment was mailed on July 27, 2007 from the USPTO.

Applicants respectfully disagree with the Examiner's position. Applicants' position is that inclusion of the authorization to charge fees to the deposit account results in the Response being timely filed.

In fact, this scenario has already been the subject of an opinion by the PTO on a Decision for Regrade of a Registration Examination held in 2000. A copy of that opinion is attached as Exhibit D. Morning Question 11 dealt with a situation like the one presented here. In Question 11, a petition for extension of time erroneously requested a one-month extension instead of a two-month extension, but also included authorization to charge fees to a deposit account. The Decision held that the petition for one-month extension of time should be construed as a petition requesting the appropriate period of extension, and that the appropriate fee will be charged to the deposit account.

This interpretation of the rules is consistent with MPEP Sec. 710.02. In Sec. 710.02(e), the MPEP discusses 37 CFR 1.136(a)(3), stating that it "is intended as a safety net to avoid a potential loss of patent rights for applicants who had inadvertently omitted a petition". This intent would certainly encompass the present case, in which a petition was filed but merely contained an error as to the number of months. In other words, the intent of 37 CFR 1.136(a)(3) certainly encompasses a check mark misplaced by one month.

Exhibit E is also submitted to show that the deposit account in question had sufficient funds to pay the extension fee.


In sum, Applicants request that their Petition of Extension of Time, together with their authorization to charge fees to the deposit account, be construed as a petition for extension of time for the proper number of months, and that any required funds be charged to their deposit

account. Applicants request that this Petition under 37 C.F.R. § 1.181 be granted, and that the holding of abandonment of the application be revived.

CONCLUSION

Applicants believe there are no fees due, however, if it is determined that a petition fee or any additional fees or extensions are due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment for this paper to Deposit Account No. 50-2148 of BAKER BOTTS L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicants



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Date: August 21, 2007

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